

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JOSEPH E. KENNEDY,

Petitioner,

v.

**Civil Action No. 2:07 CV 60
(Maxwell)**

WAYNE PHILLIPS, Warden,

Respondent.

ORDER

It will be recalled that on August 8, 2007, *pro se* Petitioner Joseph E. Kennedy instituted the above-styled civil action by filing an Application For Habeas Corpus Pursuant To 28 U.S.C. § 2241, seeking an Order directing the Bureau of Prisons to transfer him to a Community Corrections Center for the last six months of his term of imprisonment.

It will further be recalled that the case was referred to United States Magistrate Judge John S. Kaull in accordance with Rules 83.01, *et seq.*, of the Local Rules of Prisoner Litigation Procedure.

By Order To Show Cause entered August 24, 2007, Magistrate Judge Kaull indicated that he had conducted a preliminary review of the file and had determined that summary dismissal was not appropriate at that time. Accordingly, Magistrate Judge

Kaull's September 27, 2007, Order directed the Respondent to show cause why the Petitioner's § 2241 Application should not be granted.

A Motion To Dismiss was filed by the Respondent on September 21, 2007, along with a Memorandum Of Law In Support thereof and a Response To Show Cause Order. The Petitioner's Response And Memorandum Contra was filed on October 1, 2007.

On October 24, 2007, United States Magistrate Judge Kaull issued an Opinion/Report And Recommendation wherein he recommended that the Respondent's Motion To Dismiss be granted and that the Petitioner's § 2241 Petition be denied and dismissed without prejudice.

In his Opinion/Report And Recommendation, Magistrate Judge Kaull provided the parties with ten days from the date of said Opinion/Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Opinion/Report And Recommendation.

An Answer In Contra To Opinion/Report & Recommendation & Addendum To Original Application For Habeas Corpus was filed by the Petitioner on November 5, 2007.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the Magistrate Judge's findings to which objection is made. The Court is not, however, required to review, under a *de novo* or any other standard,

the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are made. Thomas v. Arn, 474 U.S. 140, 150 (1985).

As previously noted, on November 5, 2007, the Petitioner filed an Answer In Contra To Opinion/Report & Recommendation & Addendum To Original Application For Habeas Corpus. The Court has conducted a *de novo* review only as to the portions of the Opinion/Report and Recommendation to which the Petitioner objected. The remaining portions of the Opinion/Report And Recommendation to which the Petitioner has not objected have been reviewed for clear error.

The Court finds that the issues raised by the Petitioner in his Answer In Contra To Opinion/Report & Recommendation & Addendum To Original Application For Habeas Corpus were thoroughly considered by Magistrate Judge Kaull in said Opinion/Report And Recommendation. The Court is of the opinion that Magistrate Judge Kaull's Opinion/Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled action. Accordingly, it is

ORDERED that the Opinion/Report And Recommendation entered by United States Magistrate Judge John S. Kaull on October 24, 2007, be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Respondent's Motion To Dismiss (Docket No. 7) be, and the same is hereby, **GRANTED**. It is further

ORDERED that the Petitioner's Application For Habeas Corpus Pursuant To 28 U.S.C. § 2241 (Docket No. 1) be, and the same is hereby, **DENIED and DISMISSED** without prejudice.

Consistent with the findings adopted from the October 24, 2007, Opinion/Report And Recommendation, it is further

ORDERED that the Petitioner's Motion To Release At Six (6) Months Directly to Home Confinement With Memorandum In Support (Docket No. 14) be, and the same is hereby, **DENIED**. It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of

Appeals For The Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to the *pro se* Petitioner and to counsel of record in the above-styled civil action.

ENTER: August 13, 2008

/S/ Robert E. Maxwell

United States District Judge